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7 KINSALE INSURANCE COMPANY,
8 Plaintiff,
9 v.
10 FAIRWINDS ESTATE WINERY LLC,
11 Defendant.

Case No. [3:21-cv-05968-WHO](#)

**ORDER GRANTING MOTION TO
DISMISS**

Re: Dkt. No. 13

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13 Defendant Fairwinds Estate Winery LLC (“Fairwinds”) owns a winery that was damaged
14 by the Glass Fire and partially insured by plaintiff Kinsale Insurance Company (“Kinsale”).
15 Kinsale filed this suit seeking declaratory judgment that it does not owe anything for the losses.
16 Soon after, Fairwinds filed suit in state court for breach of contract based on the same facts and
17 Kinsale removed it to this Court. In a separate order, I remand the other case to state court.
18 Fairwinds now seeks to dismiss this case. Oral argument is unnecessary and the hearing is
19 VACATED. The motion to dismiss is GRANTED. Because the state-court case will proceed,
20 declining jurisdiction under the Declaratory Judgment Act is appropriate to avoid two lawsuits
21 litigating the same issues in different court systems.

22 **BACKGROUND**

23 Fairwinds owns and operates a winery in Calistoga, California. Complaint (“Compl.”)
24 [Dkt. No. 1] ¶ 7. It possessed a primary property insurance policy (the “Primary Policy”) issued
25 by non-party Beazley Insurance Services (“Beazley”), which had a coverage limit of \$8,3100,000.
26 *Id.* ¶¶ 17, 20. It also possessed an excess property insurance policy (the “Excess Policy”) from
27 Kinsale that lasted from August 1, 2020, to May 1, 2021. *Id.* ¶ 18. That Excess Policy provided
28 additional coverage above the Primary Policy up to \$2,060,831. *Id.* ¶ 19.

1 On September 27, 2020, the Glass Fire, a large wildfire, burned through swathes of Napa
2 and Sonoma counties. *Id.* ¶¶ 13–16. It destroyed the winery’s main building and tasting room and
3 damaged many other areas. *Id.* ¶¶ 13, 15–16. Fairwinds submitted a claim to Beazley, which paid
4 to the limit of \$8,310,000. *Id.* ¶ 17. Kinsale argues that the Excess Policy’s “Statement of
5 Values”—a document that delineates the value of various parts of the winery, *see id.* ¶ 9—limited
6 the value of the destroyed property to approximately \$4.5 million, which Beazley had already
7 paid. *See, e.g., id.* ¶¶ 29–32.

8 On August 2, 2021, Kinsale filed suit in this court against Fairwinds, seeking declaratory
9 judgment that it was not obligated to pay under the Excess Policy. On September 3, 2021,
10 Fairwinds filed suit in state court against Kinsale and other parties, including the insurance broker
11 (the “State Case”). *See* Case No. 3:21-cv-07678. Kinsale removed the State Case to this court on
12 September 30. I related the two cases. Dkt. No. 20. In a separately filed order, I remand the State
13 Case to state court for lack of subject matter jurisdiction.

LEGAL STANDARD

15 The Declaratory Judgment Act provides that, “[i]n a case of actual controversy within its
16 jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may
17 declare the rights and other legal relations of any interested party seeking such declaration,
18 whether or not further relief is or could be sought.” 28 U.S.C. § 2201(a). The district court must
19 first determine whether there is an actual case or controversy within its jurisdiction. *Principal Life*
20 *Ins. Co. v. Robinson*, 394 F.3d 665, 669 (9th Cir. 2005). The court must then decide whether to
21 exercise that jurisdiction. *Am. States Ins. Co. v. Kearns*, 15 F.3d 142, 143–44 (9th Cir. 1994).
22 “The statute gives discretion to courts in deciding whether to entertain declaratory judgments; it
23 states that the court ‘*may* declare the rights . . . of any interested party.’ ” *Id.* (quoting 28 U.S.C. §
24 2201(a)) (alteration in original).

25 In determining whether to exercise declaratory-judgment jurisdiction, the court analyzes
26 “the factors set out in *Brillhart v. Excess Ins. Co.*, 316 U.S. 491 (1942), and its progeny.”
27 *Principal Life Ins. Co. v. Robinson*, 394 F.3d 665, 669 (9th Cir. 2005). Those factors are
28 “avoid[ing] needless determination of state law issues,” “discourag[ing] litigants from filing

1 declaratory actions as a means of forum shopping,” and “avoid[ing] duplicative litigation.” *Gov’t*
2 *Emps. Ins. Co. v. Dizol*, 133 F.3d 1220, 1225 (9th Cir. 1998). They are “not exhaustive,” and the
3 Ninth Circuit has also “suggested” considering “whether the declaratory action will settle all
4 aspects of the controversy; . . . serve a useful purpose in clarifying the legal relations at issue; . . .
5 is being sought merely for the purposes of procedural fencing or to obtain a ‘res judicata’
6 advantage; or . . . will result in entanglement between the federal and state court systems.” *Id.* at
7 1225 n.5. And “the district court might also consider the convenience of the parties, and the
8 availability and relative convenience of other remedies.” *Id.*

DISCUSSION

10 Fairwinds moves to dismiss or stay this case so that the State Case can proceed in state
11 court. *See generally* Motion to Dismiss (“Mot.”) [Dkt. No. 13]. For the reasons that follow, I will
12 decline jurisdiction under the Declaratory Judgment Act and dismiss the case without prejudice. I
13 note at the outset that much of Kinsale’s argument for keeping jurisdiction depends on the
14 assumption that I would not remand the State Case. Because the State Case has been remanded,
15 there are not many good arguments for keeping jurisdiction.

16 I begin with the *Brillhart* factors, the “philosophic touchstone” of the inquiry. *Dizol*, 133
17 F.3d at 1225.¹ First, dismissing this case would “avoid[] duplicative litigation.” *Id.* The State
18 Case will resolve the issue in this case. While this case is wrapped in the garb of the Declaratory
19 Judgment Act, the core legal issue to be decided is what was owed under the Policy. That issue
20 will be decided in the State Case via a breach-of-contract claim and any counterclaims. There is,
21 therefore, a risk of inconsistent rulings by this Court and the state court. The State Case will also
22 settle an issue arising from the same facts that this case does not: the liability of the insurance
23 broker for professional negligence. *See* Case No. 3:21-cv-07678, Dkt. No. 2, Ex. A.

24 It also appears plausible that dismissing this case would “avoid[] needless determination of
25 state law issues.” *Id.* Fairwinds argues that its theory—that the limits in a statement of value

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28 ¹ There is no dispute that an Article III case or controversy underlies the declaratory judgment
claims: an insurer and insured dispute whether coverage is required under an insurance policy for
a particular injury and diversity jurisdiction exists. I move directly to the issue of discretion.

1 cannot overcome the top-line policy amount—is not based on any explicit state-court holding.
2 Kinsale’s brief does not dispute this point; its arguments touching on this are just generalities
3 about the competence of federal courts to adjudicate issues of state law. *See* Opposition to the
4 Mot. (“Oppo.”) [Dkt. No. 19] 4–5. Perhaps the issue will be a relatively straightforward
5 application of established contract and insurance doctrines. Perhaps not. But Fairwinds has put
6 forward a colorable argument of unresolved issues of state law and Kinsale has not rebutted it.

7 The forum-shopping and “res judicata advantage” factors also favor dismissal. *Dizol*, 133
8 F.3d at 1225 & n.5. This may seem an odd conclusion as this case was filed before the State Case.
9 In some circumstances, that would be significant because it would signal that the state-court
10 litigant is the one attempting to either forum shop or secure a “res judicata advantage.” On these
11 facts, however, I am not concerned about that. Kinsale sued after *Fairwinds* initiated the coverage
12 process and Kinsale denied it. There is little doubt that Fairwinds’s pre-litigation wheels were
13 already spinning, even if it had not yet filed suit. Kinsale’s suit is not a normal proactive
14 insurance suit (of the kind, for instance, often filed by insureds when they believe insurance
15 contracts are violated). Indeed, the Ninth Circuit has explicitly held *in the context of declaratory*
16 *actions by insurers* that “[r]eactive litigation can occur in response to a claim an insurance carrier
17 believes to be not subject to coverage even though the claimant has not yet filed his state court
18 action: the insurer may anticipate that its insured intends to file a non-removable state court action,
19 and rush to file a federal action before the insured does so.” *Cont'l Cas. Co. v. Robsac Indus.*, 947
20 F.2d 1367, 1372 (9th Cir. 1991), *overruled on other grounds by* *Dizol*, 133 F.3d at 1220. This sort
21 of reactive litigation rings declaratory-judgment alarm bells. *See id.* And courts have refused to
22 exercise jurisdiction in similar circumstances. *See Travelers Indem. Co. of Connecticut v. Newlin*,
23 No. 20CV765-GPC(DEB), 2020 WL 5517591, at *11 (S.D. Cal. Sept. 14, 2020). To be sure, not
24 every suit of this kind by an insurer seeking to avoid coverage is impermissibly reactive, but it
25 appears more likely than not that this one is.

26 The non-*Brillhart* factors are either neutral or favor dismissal. While the declaratory
27 action may “settle all aspects,” *Dizol*, 133 F.3d at 1225 n.5, of *this* suit, it would still leave
28 unresolved the question of the broker’s liability—a question that is closely related to Kinsale and

1 Fairwinds's dispute.² The State Case, in contrast, will settle the entire universe of liability
2 stemming from these facts. And while a declaratory judgment may help "clarify[] the legal
3 relations at issue," *id.*, it again would not address the broker and may create an inconsistent
4 outcome from the one reached by the state court. For the reasons explained above in discussing
5 the duplicative-litigation factor, this case proceeding would excessively entangle the state and
6 federal systems—and potentially set them on a collision course. *See id.* And when it comes to
7 convenience, *id.*, it is surely more convenient to litigate in one forum than two.

8 The most important considerations counsel permitting the State Case to run to its
9 conclusion rather than letting two parallel actions proceed in two different court systems. No
10 factor favors maintaining the action. Accordingly, I will grant the motion to dismiss.

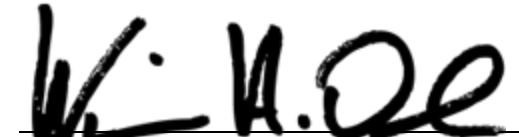
11 CONCLUSION

12 The motion to dismiss is GRANTED; this case is DISMISSED without prejudice.
13 Judgment will be entered accordingly.

14 IT IS SO ORDERED.

15 Dated: November 23, 2021

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William H. Orrick
United States District Judge

26 ² Fairwinds argues that this case will only settle whether Fairwinds was owed more under the
27 policy or not, leaving other issues for another day. It seems, however, that Kinsale is correct that
28 any other claims *against it* would have to be raised as compulsory counterclaims, so they would be
dealt with in the suit too. *See Fed. R. Civ. P. 13(a).* But that does not mean that the connected
issue of broker liability would be settled by this suit (and Kinsale makes no argument that the
broker would have to be joined).